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HOUSE RESEARCH ORGANIZATION

daily floor report

Monday, May 20, 2019
86th Legislature, Number 69
The House convenes at 10 a.m.
Part One

The bills analyzed or digested in Part One of today's *Daily Floor Report* are listed on the following page.

All HRO bill analyses are available online through TLIS, TLO, CapCentral, and the HRO website.

Dwayne Bohac
Chairman
86(R) - 69

HOUSE RESEARCH ORGANIZATION

Daily Floor Report
Monday, May 20, 2019
86th Legislature, Number 69
Part 1

SUBJECT: Preventing adverse government actions based on religious affiliations

COMMITTEE: State Affairs — favorable, without amendment

VOTE: 7 ayes — Phelan, Harless, Holland, P. King, Parker, Smithee, Springer

4 nays — Deshotel, Guerra, Raymond, E. Rodriguez

1 absent — Hernandez

1 present not voting — Hunter

SENATE VOTE: On final passage, May 16 — 19-12 (Alvarado, Hinojosa, Johnson, Menéndez, Miles, Powell, Rodríguez, Seliger, Watson, West, Whitmire, Zaffirini)

WITNESSES: *On House companion bill, HB 3172:*
For — Ken DeHart, Celebration Church; James Whitt and Tamika Sanders, Coming Out, Inc.; Autumn Stroup, Family Policy Alliance; Angela Smith, Fredericksburg Tea Party; Nicole Hudgens, Mary Castle, and David Walls, Texas Values; Jonathan Saenz, Texas Values Action; Jason Vaughn, Texas Young Republicans; and 21 individuals; (*Registered, but did not testify*: Adam Cahn, Cahnman's Musings; Rhonda Sepulveda, Catholic Charities of the Archdiocese of Galveston Houston; Beverly Roberts, Concerned Women for America; Charles Flowers, Faith Outreach Center, International; Steve Washburn, First Baptist Church Pflugerville; Matt Long, Fredericksburg Tea Party; Danny Forshee, Great Hills Baptist Church; Reynaldo Gonzalez, Iglesia Cristiana Aposento Alto; Marta Tovar, Jordan River Church; Sandra Gonzalez and Jorge Tovar, Laredo Prayer Task Force; Crystal Main, NE Tarrant Tea Party; Gary Forbes, NETTP; Karen McDaniel, Precinct Chair of #514; James Dickey, Terry Holcomb, and Alma Jacksom, Republican Party of Texas; Patrick Von Dohlen, San Antonio Family Association; Cindy Asmussen, Southern Baptists of Texas Convention; Mark Dorazio, State Republican Executive Committee; Philip Sevilla, Texas Leadership Institute for Public Advocacy; David Welch, Texas Pastor Council; Sheila Hemphill, Texas Right To Know; Cynthia Brehm, The Republican Party of Bexar

County; Jennifer Allmon, The Texas Catholic Conference of Bishops; and 120 individuals)

Against — Emilie Kopp, Bonobo Interactive; Rachel Hill and Samantha Smoot, Equality Texas; Billy Simmons, Gay and Lesbian Alliance of North Texas; Alicia Weigel, InterACT Advocates; Jessica Shortall, Texas Competes; Joshua Houston, Texas Impact; Mike Hendrix, Texas State LGBTQ Chamber; Finnigan Jones, Trans-Cendence International; and 12 individuals; (*Registered, but did not testify*: Brad Pritchett and Drucilla Tigner, ACLU of Texas; Lisa Humphrey and Lily Smullen, AntiDefamation League; Angela Hale, American Society of Association Executives, Texas Welcomes All, Visit Austin, Visit Fort Worth; Jennifer Rodriguez, Apple, Inc.; Tom Noonan, Austin Convention and Visitors Bureau; Brie Franco, City of Austin; Clifford Sparks, City of Dallas; Andy Segovia, City of San Antonio; Priscilla Camacho, Dallas Regional Chamber, Metro 8 Chambers of Commerce; Andrea Reyes and Claudia Yoli Ferla, Deeds Not Words; Daniel Womack, Dow; Holt Lackey and Marcella Sutton, Equality Texas; Gordy Carmona, Gay and Lesbian Alliance of North Texas; Dana Harris, Greater Austin Chamber of Commerce; Sarah Warbelow, Human Rights Campaign; Sandy Dochen, IBM; Susanne Kerns, Informed Parents of Austin; Jay Barksdale, IrvingLas Colinas Chamber of Commerce; Katy Perkins, Kingsman Consulting; Brenda Koegler, League of Women Voters of Texas; Erika Galindo, Lilith Fund for Reproductive Equity; Lisa Hermes, McKinney Chamber of Commerce; Rachel Leader, NAMI Austin; Aimee Arrambide, Emily Martin, and Blake Rocap, NARAL Pro-Choice Texas; Greg Hansch and Alissa Sughrue, National Alliance on Mental Illness (NAMI) Texas; Will Francis, National Association of Social Workers-Texas Chapter; Holli Davies, North Texas Commission; Erica Anthony-Benavides, Our Revolution Texas; Cece Cox, Resource Center-Dallas; Amy Waggoner, Salesforce; Jackie Padgett, Silicon Labs; Josh Cogan, Stonewall Democrats of Dallas; David Edmonson, TechNet; Dwight Harris, Texas American Federation of Teachers; Adrian Warren, Texas Association for Lesbian, Gay, Bisexual, and Transgender Issues in Counseling; Derek Robertson, Texas Association of Counselor Education and Supervision; Jan Friese, Texas Counseling Association; Joey Gidseg, Texas Democrats with Disabilities; Carisa Lopez and Katherine Miller, Texas Freedom Network; Elizabeth Ballew, Texas Handmaids; Trace

Finley, United Corpus Christi Chamber of Commerce; Phillip Jones, VisitDallas; and 133 individuals)

DIGEST:

SB 1978 would prohibit a governmental entity from taking any adverse action against any person based wholly or partly on the person's membership in, affiliation with, or contribution, donation, or other support provided to a religious organization.

Adverse action. An adverse action would be any action taken by a governmental entity to:

- withhold, reduce, exclude, terminate, or otherwise deny any grant, contract, subcontract, cooperative agreement, loan, scholarship, license, registration, accreditation, employment, or other similar status from or to a person;
- withhold, reduce, exclude, terminate, or otherwise deny any benefit provided under a benefit program from or to a person;
- alter in any way the tax treatment of, cause any tax, penalty, or payment assessment against, or deny, delay, or revoke a tax exemption of a person;
- disallow a tax deduction for any charitable contribution made to or by a person;
- deny admission to, equal treatment in, or eligibility for a degree from an educational program or institution to a person; or
- withhold, reduce, exclude, terminate, or otherwise deny access to a property, educational institution, speech forum, or charitable fundraising campaign from or to a person.

Governmental entities. Governmental entities would include:

- the state and its boards, commissions, councils, departments, or other agencies in the executive branch, including a public institution of higher education;
- the Legislature or a legislative agency;
- a state judicial agency or the State Bar of Texas;
- a political subdivision, including a county, municipality, or special district or authority; and

- an officer, employee, or agent of any of these governmental entities.

The bill would not apply to prohibitions on government contracts with companies that boycott Israel and restrictions on certain state investments in those companies.

Definitions. The bill would use the definition of "person" in Government Code sec. 311.005, which includes corporations, organizations, and associations, except the term would not include:

- an employee of a governmental entity acting within the employee's scope of employment;
- a contractor of a governmental entity acting within the scope of the contract; or
- an individual or a medical or residential custodial health care facility while the individual was providing medically necessary services to prevent another individual's death or imminent serious physical injury.

The bill would use the definition in Civil Practice and Remedies Code sec. 110.011(b), which states that an organization is a "religious organization" if:

- its primary purpose and function is religious, it is a religious school organized primarily for religious and educational purposes, or it is a religious charity organized primarily for religious and charitable purposes; and
- it does not engage in activities that would disqualify it from tax exempt status under sec. 501(c)(3) of the Internal Revenue Code of 1986, as it existed on August 30, 1999.

Available relief. A person could assert an actual or threatened violation of the bill's prohibition on adverse action as a claim or defense in a judicial or administrative proceeding and obtain injunctive relief, declaratory relief, and court costs and reasonable attorney's fees. A person could commence an action and relief could be granted regardless of whether the

person had sought or exhausted available administrative remedies.

A person who alleged a violation of a prohibited adverse action could sue the governmental entity for the relief provided by the bill. Sovereign or governmental immunity would be waived and abolished to the extent of liability for that relief.

Attorney general action. The attorney general could bring an action for injunctive or declaratory relief against a governmental entity to enforce compliance with the bill. That authority could not be construed to deny, impair, or otherwise affect any authority of the attorney general or a governmental entity acting under other law to institute or intervene in a proceeding. The attorney general could not recover expenses incurred in bringing, instituting, or intervening in an action.

Interpretation. The bill could not be construed to prevent a governmental entity from providing, either directly or through a person who was not seeking protection under the bill, any benefit or service authorized under state or federal law.

The bill could not be construed to preempt a state or federal law that was equally or more protective of the free exercise of religious beliefs or to narrow the meaning or application of a state or federal law protecting the free exercise of religious beliefs.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2019.

SUPPORTERS SAY:

SB 1978 would ensure that governmental entities could not discriminate against individuals and businesses exercising their right to religious freedom as expressed through their membership in or contribution to a religious organization. This would protect the First Amendment rights of all Texans, regardless of their political views or lifestyle, to support religious organizations without fear that it could impact their ability to work or do business with a governmental entity.

The bill is a reasonable response to concerns that governmental entities

could undermine the rights of individuals and businesses by making contracting decisions based on those individuals' and businesses' support of certain religious nonprofits. Government should not use its power over Texans' ability to earn a living to deny a contract, loan, license, accreditation, or employment to a person based on the person's affiliation with a religious organization.

The bill could be not be used to cloak discriminatory activity because the bill's protections would not extend to religious groups that engaged in racial discrimination or other activities that would disqualify them from federal tax-exempt status.

OPPONENTS SAY:

SB 1978 could force local elected officials to do business with a person or business that supported religious organizations that the city believed were discriminatory against people who may not conform to certain religious beliefs. City councils should be allowed to make contracting decisions that reflect the values of their citizens without interference from state government.

The bill is unnecessary because the First Amendment and the Texas Religious Freedom Restoration Act already prevent a government agency from substantially burdening a person's free exercise of religion.

Passage of the bill could carry economic consequences for the state, as it would send a message that Texas did not value inclusion. This could drive businesses, special events, and tourists away from Texas to other states.

SUBJECT: Prohibiting use of public money for certain lobbying activities

COMMITTEE: State Affairs — committee substitute recommended

VOTE: *After recommitted:*
9 ayes — Phelan, Harless, Holland, Hunter, P. King, Parker, Raymond, Smithee, Springer

3 nays — Hernandez, Guerra, E. Rodriguez

1 absent — Deshotel

SENATE VOTE: On final passage, April 17 — 18-13 (Alvarado, Hinojosa, Johnson, Lucio, Menéndez, Miles, Powell, Rodríguez, Seliger, Watson, West, Whitmire, and Zaffirini)

WITNESSES: *On House companion bill, HB 281:*
For — Adam Cahn, Cahnman's Musings; Tamara Colbert, Paul Hodson, and Shelby Williams, Convention of States; Cheryl Johnson, Galveston County Tax Office; Ed Heimlich, Informed Citizens; Robin Lennon, Kingwood TEA Party, Inc.; Crystal Main, NE Tarrant Tea Party; Terry Holcomb and Summer Wise, Republican Party of Texas; Mark Dorazio, Republican Party of Texas State Republican Executive Committee; Mark Ramsey, Republican Party of Texas, SREC SD7; Terry Harper, RPT; Cary Cheshire, Texans for Fiscal Responsibility; Chuck DeVore, Texas Public Policy Foundation; Terri Hall, Texas TURF and Texans for Toll-Free Highways; Saurabh Sharma, Young Conservatives of Texas; and 21 individuals; (*Registered, but did not testify*: Justin Keener, Americans for Prosperity-Texas; Chris Hill, Collin County; Darrell Hale, Collin County Commissioner; Michael Cassidy, Convention of States; Peter Morales, COS; Stacy Mcmahan, East Texans for Liberty; Angela Smith, Fredericksburg Tea Party; James Lennon, Kingwood TEA Party; Mark Keough, Montgomery County; Fran Rhodes, NE Tarrant Tea Party; Richard Davey, NETTP; Gail Stanart, Republican Party of Texas; Mia McCord, Texas Conservative Coalition; Jimmy Gaines, Texas Landowners Council; Donnis Baggett, Texas Press Association; Jonathan Saenz, Texas Values; Nicole Hudgens, Texas Values Action; Ellen

Troxclair, TPPF; Roger Falk, Travis County Taxpayers Union; Walter West II (RET), VHSE and RPT; and 32 individuals)

Against — Don Allred, Oldham County; Tom Forbes, Professional Advocacy Association of Texas; Becky St. John, Texas Association of School Boards; (*Registered, but did not testify*: Brie Franco, City of Austin; TJ Patterson, City of Fort Worth; Sally Bakko, City of Galveston; Brad Neighbor, City of Garland; David Palmer, City of Irving; Scott Swigert, City of Mont Belvieu; Jeff Coyle, City of San Antonio; Amanda Gnaedinger, Common Cause Texas; Adam Haynes, Conference of Urban Counties; Leon Klement and John Klement, Cooke County; Jay Elliott, Falls County; Bill Kelly, City of Houston Mayor's Office; Adrian Shelley, Public Citizen; Cyrus Reed, Sierra Club Lone Star Chapter; Amy Beneski, Texas Association of School Administrators; John Love, Texas Municipal League; Tammy Embrey, The City of Corpus Christi; Julie Wheeler, Travis County Commissioners Court; Anna Alkire; Tracy Fisher)

On — Ian Steusloff, Texas Ethics Commission

BACKGROUND: Local Government Code sec. 89.002 allows a county commissioners court to spend money from the general fund for membership fees and dues of a nonprofit state association of counties if:

- a majority of the court votes to approve membership;
- the association exists for the betterment of county government and the benefit of all county officials;
- the association is not affiliated with a labor organization;
- neither the association nor an employee directly or indirectly influences or attempts to influence legislation pending before the Legislature; and
- neither the association nor an employee directly or indirectly contributes money, services, or items of value to a political campaign or endorses a candidate for public office.

DIGEST: CSSB 29 would prohibit the governing body of a political subdivision from spending public money to directly or indirectly influence or attempt to influence the outcome of legislation pending before the Legislature

relating to:

- taxation, including implementation, rates, and administration;
- bond elections;
- tax-supported debt; and
- ethics and transparency of public servants.

The bill would apply to a political subdivision that imposed a tax and a regional mobility authority, toll road authority, or transit authority.

CSSB 29 would not prohibit an officer or employee of a political subdivision from:

- providing information or appearing before a legislative committee at the request of a member;
- advocating for or against, influencing, or attempting to influence pending legislation while acting as an elected officer; or
- advocating for or against, influencing, or attempting to influence pending legislation if those actions would not require a person to register as a lobbyist.

The governing body of a political subdivision could spend money in its name for membership fees and dues of a nonprofit state association or organization of similarly situated political subdivisions in certain circumstances listed under Local Government Code sec. 89.002 and if the organization did not influence legislation under prohibitions in this bill.

If a political subdivision or organization engaged in an activity prohibited by this bill, a taxpayer or resident of the subdivision would be entitled to appropriate injunctive relief to prevent any further activity. A taxpayer or resident who prevailed in an action would be entitled to recover reasonable attorney's fees and costs incurred in bringing the action.

A political subdivision that used public money to influence or attempt to influence pending legislation would have to disclose on a comprehensive annual financial report the total amount spent that fiscal year to compensate registered lobbyists. This provision would not require a

political subdivision or authority to prepare a separate comprehensive annual financial report for that disclosure and would apply only to a fiscal year that began on or after the bill's effective date.

The bill would apply only to an expenditure or payment of public money made on or after September 1, 2019, including a payment made under a contract entered into before, on, or after the bill's effective date. A contract term providing for a prohibited payment would be void on the bill's effective date for being counter to public policy.

The bill would take effect September 1, 2019.

SUPPORTERS SAY:

CSSB 29 would help end the practice of local governments using tax dollars to lobby the Legislature for legislation that would take even more money from citizens and residents. The bill would prohibit political subdivisions, including cities, counties, school districts, and transportation authorities, from hiring contract lobbyists to influence legislation specifically related to taxation, bond elections, tax-supported debt, and ethics.

Local governments use millions of dollars of taxpayer money each year for lobbying, diverting those funds from important community services. The lobbyists typically represent the best-funded and most well connected individuals, not average citizens. Payments are made with no transparency because local governments do not divulge how much money is used to pay these lobbyists.

Not only is it unfair for taxpayer money to be used for lobbying activities against most taxpayers' interests, but large metropolitan areas have the budget to spend much more on contract lobbying than rural districts, giving them an advantage. This bill would level the playing field between urban and rural areas, giving them equal representation at the Legislature.

CSSB 29 would ensure that taxpayer dollars were not used against taxpayer wishes but also would continue to allow lobbying on other topics. Local governments would have to report lobbying expenses in a comprehensive annual financial report, ensuring transparent use of public funds. The bill also would allow local elected officials and their staff to

lobby the Legislature for any issue and local governments to join an organization representing local governments, as is already allowed for counties.

OPPONENTS SAY:

CSSB 29 would limit the ability of cities, counties, school districts, and other local governments to advocate on behalf their communities. It is not an efficient use of taxpayer money to pay for certain local government employees, who have other needs and full-time jobs in the community, to travel to the Texas Capitol to attend multiple committee hearings, visit legislative offices, and field requests from members.

The premise of the bill — that local government lobbyists advocate against the interests of taxpayers — is incorrect. Local governments hold transparent open meetings to gain community input and are also subject to open records. Residents and taxpayers ultimately have the ability to set the legislative agenda. Local government lobbyists often protect the interests of residents against private lobbyists. This bill would remove local control and have a chilling effect on local engagement at the Legislature. If local governments could not lobby the Legislature, future legislation that constituted an unfunded mandate could further cost taxpayer money.

CSSB 29 also would leave cities, counties, and other local governments open to liability for any number of simple activities. The bill is not specific as to what is meant by "directly or indirectly influencing" legislation, which may lead to confusion and a large number of suits filed against the local government. Those actions would ultimately come at the expense of the taxpayer.

The bill would void certain contracts that would be counter to public policy, infringing on private contract rights and raising questions about the constitutionality of the bill.

OTHER OPPONENTS SAY:

While CSSB 29 is a necessary step to end the practice of taxpayer-funded lobbying, the bill should go further to better protect taxpayer interests. It should have a better enforcement mechanism, rather than making taxpayers pay to go to court and face lawyers paid for with public tax dollars. The bill would be more effective if violations were reported to the Office of the Attorney General and individuals who violated the bill had

to pay with their own money.

NOTES: CSSB 29 was reported favorably without amendment from the House Committee on State Affairs on May 6, placed on the General State Calendar for May 17, recommitted to committee, and reported favorably as substituted May 17.

SUBJECT: Requiring hand-delivered information to pregnant women before abortion

COMMITTEE: Public Health — favorable, without amendment

VOTE: 8 ayes — Wray, Allison, Frank, Lucio, Ortega, Price, Sheffield, Zedler

0 nays

3 present not voting — S. Thompson, Coleman, Guerra

SENATE VOTE: On final passage, April 23 — 22-9 (Alvarado, Johnson, Menéndez, Miles, Powell, Rodríguez, Watson, West, Whitmire)

WITNESSES: No public hearing

BACKGROUND: Health and Safety Code ch. 171 establishes the Woman's Right to Know Act and specifies that a person may not perform an abortion on a woman without the woman's voluntary and informed consent. Sec. 171.012(a)(1) and sec. 171.012(a)(2) require the physician or physician's agent to inform the pregnant woman of the physician's name, the associated medical risks of an abortion procedure and pregnancy, medical and social services assistance, and agencies that provide pregnancy prevention counseling. This subsection also requires the physician or physician's agent to provide the pregnant woman with certain printed materials described by sec. 171.014.

Sec. 171.014 requires the Department of State Health Services to publish informational materials that include:

- the above information in sec. 171.012;
- a list of adoption agencies and free sonogram services; and
- a description of an unborn child's characteristics.

Sec. 171.012(b) prohibits information under sec. 171.012(a)(1) and sec. 171.012(a)(2) from being provided by audio or video recording and requires the information to be provided at least 24 hours before the abortion will be performed. If the pregnant woman lives less than 100

miles from the nearest licensed abortion facility or a facility that performs more than 50 abortions in any 12-month period, the information must be provided orally and in person in a private and confidential setting. If the pregnant woman lives 100 miles or more from the nearest licensed abortion facility or a facility that performs more than 50 abortions in any 12-month period, the information must be provided orally by telephone or in person in a private and confidential setting.

DIGEST:

SB 24 would require that information required to be provided orally by telephone by a physician to a pregnant woman on whom an abortion would be performed and who lived at least 100 miles away from the nearest licensed abortion facility be on a private call.

The bill also would require a physician who would perform an abortion, or the physician's designee, to hand-deliver to the pregnant woman a copy of the informational materials described by Health and Safety Code sec. 171.014 under the following circumstances:

- on the day of the required consultation for a pregnant woman who lived less than 100 miles from the nearest licensed abortion facility or a facility that performed more than 50 abortions in any 12-month period; or
- before any sedative or anesthesia was administered to the pregnant woman on the day of the abortion and at least two hours before the abortion if the woman lived at least 100 miles away from the nearest abortion facility or facility that performed more than 50 abortions in any 12-month period.

The bill would take effect September 1, 2019, and would apply only to an abortion performed on or after that day.

SUPPORTERS SAY:

SB 24 would close loopholes in current law by clarifying that a required phone consultation between a physician and a pregnant woman seeking an abortion be conducted in private. Observers have reported that some physicians conduct simultaneous conference calls with multiple women rather than speaking privately to each woman individually. Requiring a private telephonic consultation would enhance confidentiality and align with other medical standards that require private patient consultations to

occur in advance of surgical procedures.

By requiring a physician or physician's agent to hand-deliver the informational materials to a woman seeking an abortion, the bill would ensure that the woman received accurate information on all available resources before deciding whether to have an abortion.

OPPONENTS SAY:

By requiring informational materials to be hand-delivered to a woman seeking an abortion, SB 24 would further intimidate women who want to make the best decision for their own bodies without interference in the doctor-patient relationship. The bill is unnecessary because current law already requires information be provided to women seeking abortions.

SUBJECT: Revising determination of ESF sufficient balance and investment of fund

COMMITTEE: Appropriations — committee substitute recommended

VOTE: 22 ayes — Zerwas, Longoria, G. Bonnen, Buckley, Capriglione, S. Davis, Hefner, Howard, Jarvis Johnson, Miller, Minjarez, Muñoz, Rose, Schaefer, Sheffield, Sherman, Smith, Stucky, Toth, J. Turner, VanDeaver, Wilson

0 nays

5 absent — C. Bell, Cortez, M. González, Walle, Wu

SENATE VOTE: On final passage, April 17 — 31-0, on Local and Uncontested Calendar

WITNESSES: For — (*Registered, but did not testify*: Anne O'Ryan, AAA TX; Gary Bushell, Alisance for I-69 Texas, I-14/Gulf Coast Highway; Matthew Geske, Austin Chamber of Commerce; TJ Patterson, City of Fort Worth; Christine Wright, City of San Antonio; Holli Davies, North Texas Commission; Victor Boyer, San Antonio Mobility Coalition, Inc.; Drew Campbell, Transportation Advocates of Texas; Mackenna Wehmeyer, Transportation Advocacy Group Houston)

Against — None

On — Vance Ginn, Texas Public Policy Foundation; (*Registered, but did not testify*: Phillip Ashley, Comptroller of Public Accounts)

BACKGROUND: Revenue for the Economic Stabilization Fund (ESF) comes almost entirely from oil and natural gas production taxes, also known as severance taxes. Before fiscal 2015, the ESF received 75 percent of any severance tax revenue that exceeded the amount collected in fiscal 1987. A constitutional amendment adopted in 2014 requires the comptroller to send one-half of this amount to the State Highway Fund (SHF), with the rest continuing to go to the ESF.

Texas Constitution Art. 3, sec. 49-g(g) sets a cap on the amount of money

that the ESF can hold. The fund cannot exceed an amount equal to 10 percent of the total amount deposited into general revenue the previous biennium, minus investment income, interest income, and amounts borrowed from special funds.

Government Code sec. 316.092 requires the lieutenant governor and the House speaker to appoint a select committee of legislators to determine a sufficient balance for the ESF to ensure an appropriate amount of revenue is available in the fund. Sec. 316.092(d) establishes procedures for the Legislature to approve or change the sufficient balance adopted by the committee and presented to the Legislature in a concurrent resolution. If the Legislature does not finally approve a resolution providing for a sufficient balance by the 45th day of the legislative session, the balance adopted by the committee takes effect. These provisions expire December 31, 2024.

Sec. 316.093 establishes the procedures the comptroller uses either to reduce or withhold allocations to the SHF to maintain the sufficient balance in the ESF. These procedures are also used if the select committee has not adopted a sufficient balance for the ESF.

Government Code sec. 404.0241 allows the comptroller to invest a percentage of the ESF that exceeds the fund's sufficient balance in accordance with the investment standard specified in sec. 404.024(j), sometimes called the prudent investor standard. The comptroller is required to adjust the ESF's investment portfolio periodically to ensure that the balance of the ESF is sufficient to meet the fund's cash flow requirements. The comptroller is required to include the fair market value of the ESF's investment portfolio when calculating the cap on the ESF and when determining allocations of revenue to the ESF and SHF.

DIGEST:

CSSB 69 would revise how the state determines the sufficient balance for the Economic Stabilization Fund (ESF) and how the fund can be invested.

Sufficient balance. The bill would eliminate the select committee that determines the sufficient balance of the ESF. The bill would require the comptroller to determine and adopt the sufficient balance as 7 percent of the certified general revenue related appropriations made for the fiscal

biennium in which the determination was made.

Investing the ESF. The bill would revise the investment criteria applied to the ESF. It would require at least one-quarter of the fund's balance to be invested to ensure the liquidity of that amount. The comptroller would have to adjust the investment of the ESF to ensure that at all times at least one-quarter of the fund was invested in such a manner.

The comptroller could invest the rest of the fund using the prudent investor standard, which would authorize the comptroller to use any kind of investment that a prudent investor exercising reasonable care, skill, and caution would use in light of the purposes, terms, distribution requirements, and other circumstances then prevailing for the fund, taking into consideration the investment of all the assets of the fund. The comptroller would be able to pool assets of the economic stabilization fund with other state assets for investing.

The bill would remove a current requirement that the provisions on investing the ESF expire when provisions about the select committee and the sufficient balance also expire.

The bill would take effect September 1, 2019. Provisions about adjusting flows of general revenue to the ESF and SHF under what would be the new sufficient balance would apply beginning with fiscal 2022.

SUPPORTERS SAY:

CSSB 69 would revise how the Economic Stabilization Fund (ESF) is administered to maximize its investments while keeping the fund safe and available to the Legislature. The bill would establish a responsible way to steward taxpayer dollars to meet both unforeseen needs and prudent investing. The bill would not affect transfers to the State Highway Fund, which would continue once the ESF's sufficient balance was met.

Sufficient balance. The bill would revise the way the sufficient balance of the ESF was determined so that it was set in a more objective manner, rather than being decided by a committee. CSSB 69 would set the sufficient balance at 7 percent of the certified revenue estimate, which would ensure that enough was set aside to deal with unexpected economic downturns or natural disasters while simplifying and depoliticizing the

calculation. The bill would not make it harder than it is currently to spend funds, including those below the sufficient balance, which could continue to be spent as under current law.

The bill would set the sufficient balance requirement at 7 percent of the certified general revenue estimate based on information from credit rating agencies about how the level of state reserves results in the highest credit rankings. For fiscal 2018-19, without counting the supplemental budget, this would result in a sufficient balance of $7.5 billion.

Investing the ESF. The investment structure that would be set up by the bill would make sure that the bulk of the ESF was invested in a safe class of assets that would yield a better return on the state's investments than occurs under current law. Currently, the comptroller can invest only a portion of the fund that is above the sufficient balance under the prudent investor standard, which leaves much of the fund bringing in lower yields. CSSB 69 would extend the successful strategy of using the prudent-investor standard, which is well defined and would allow investments to keep pace with inflation and maintain purchasing power. Funds invested this way would continue to be available to the Legislature and could be accessed quickly if needed. The bill would ensure that 25 percent of the fund would be kept immediately available, essentially in cash or cash equivalents. Taken together, all of the ESF would be available to the Legislature if needed for a disaster or other reasons.

OPPONENTS SAY:

CSSB 69 could limit the appropriate use and administration of the ESF by changing how the fund's sufficient balance would be set.

Sufficient balance. By removing legislative input in determining the sufficient balance and instead setting it as a percentage of the budget, the bill could make it difficult for the Legislature to use ESF funds that go below that threshold. The sufficient balance can be seen as a floor on what can be spent from the ESF, and the bill would set what might be seen as an inflexible floor. The Legislature would not be able to adjust the sufficient balance, even if it felt such an adjustment was necessary.

Investing the ESF. The state should keep the funds it needs in emergency reserves and return what it does not need to taxpayers to be used in the

private sector. The state would see more returns in the long run with this strategy than it would from creating a new investment standard for the ESF. The ESF was established to address unforeseen shortfalls in revenue, not as a way to raise revenue.

OTHER OPPONENTS SAY:

If the state is going to retain ESF funds and invest them, it also should reduce the overall cap on the fund so that the fund does not grow too large and encourage government spending. One way to accomplish this would be to remove federal funds from the calculation of the ESF cap.

The state should establish a disbursement fund to ensure earnings on the ESF were used to meet the state's needs.

NOTES:

According to the Legislative Budget Board, the bill would have a positive impact to the ESF of $247.4 million through fiscal 2020-21.

SUBJECT: Creating arbitration and mediation systems and prohibiting balance billing

COMMITTEE: Insurance — committee substitute recommended

VOTE: *After recommitted:*
7 ayes — Lucio, Oliverson, G. Bonnen, S. Davis, Julie Johnson, Lambert, C. Turner

0 nays

2 absent — Paul, Vo

SENATE VOTE: On final passage, April 16 — 29-2 (Campbell, Schwertner)

WITNESSES: *On House companion bill, HB 3933:*
For — Blake Hutson, AARP Texas; Stacey Pogue, Center for Public Policy Priorities; Mia McCord, Texas Conservative Coalition; Simone Nichols-Segers, National MS Society; Jessica Boston, Texas Association of Business; Jamie Dudensing, Texas Association of Health Plans; Evan Pivalizza, Texas Society of Anesthesiologists, Texas Medical Association; Bay Scoggin, TexPIRG; Don Johnson; (*Registered, but did not testify:* Anna Gu, Children's Defense Fund Texas; Lauren Rangel, Easterseals Central Texas; Christine Yanas, Methodist Healthcare Ministries of South Texas, Inc.; Greg Hansch and Alissa Sughrue, National Alliance on Mental Health Texas; John McCord, NFIB; Adriana Kohler, Texans Care for Children; Angela Theesfeld, Texas Association of Health Underwriters; Deanna Kuykendall, Texas Brain Injury Providers Alliance; Joshua Massingill, Texas Chiropractic Association; Diana Fite, Texas College of Emergency Physicians; Joshua Houston, Texas Impact; Ray Callas, Texas Medical Association, Texas Society of Anesthesiologists; Jenna Courtney, Texas Radiological Society; Michael Grimes, Texas Society of Pathologists; Ware Wendell, Texas Watch; Bradford Holland; Cheryl Johnson)

Against — (*Registered, but did not testify:* Mark Feanny, America's ER; Dan Mays, Consumer Data Industry Association; Daniel Chepkauskas, Patient Choice Coalition of Texas)

On — John Hawkins, Texas Hospital Association; (*Registered, but did not testify:* Doug Danzeiser, Texas Department of Insurance)

BACKGROUND:

Insurance Code sec. 1467.051 allows an enrollee of a health benefit plan to request mandatory mediation of a settlement of an out-of-network health benefit plan claim if:

- the amount for which the enrollee is responsible to a facility-based provider or emergency care provider, after copayments, deductibles, and coinsurance, including the amount unpaid by the administrator or insurer, is greater than $500; and
- the health benefit claim is for emergency care or health care or medical service or supply provided by a facility-based provider in a facility that is a preferred provider or that has a contract with the administrator.

Sec. 843.336 defines a clean claim as a claim by a physician, provider, or institutional provider that complies with all applicable rules and necessary forms. Secs. 1301.103 and 843.338 require certain health benefit plans to respond to clean claims within 30 days for an electronic claim and within 45 days for a nonelectronic claim.

Sec. 1467.101 defines bad faith mediation as failing to participate in the mediation, failing to provide information the mediator believes is necessary to facilitate an agreement, or failing to designate a representative participating in the mediation with full authority to enter into any mediated agreement. Bad faith mediation is grounds for imposition of an administrative penalty by the regulatory agency that issued a license or certificate of authority to the party who committed the violation.

DIGEST:

CSSB 1264 would prohibit balance billing to health benefit plan enrollees, expand the Texas Department of Insurance (TDI) mediation program between health benefit plans and out-of-network providers that were facilities, create an arbitration system between health benefit plans and out-of-network providers that were not facilities, and require health plans to cover certain out-of-network services at the usual and customary rate.

Definitions. "Arbitration" would be defined as a process in which an impartial arbiter issued a binding determination in a dispute between a health benefit plan issuer or administrator and an out-of-network provider or the provider's representative to settle a health benefit claim.

"Out-of-network provider" would be defined as a diagnostic imaging provider, emergency care provider, facility-based provider, or laboratory service provider that was not a participating provider for a health benefit plan.

Applicability. The bill would apply to a health benefit plan offered by a health maintenance organizations (HMO), a preferred provider benefit plan offered by an insurer, and a health benefit plan other than an HMO.

Balance billing. For a health care service or supply that insurers had to cover, an out-of-network provider could not bill an enrollee for more than an applicable copayment, coinsurance, or deductible under the enrollee's health benefit plan that:

- was based on the amount initially determined payable by the health benefit plan issuer or administrator or, if applicable, a modified amount as determined under the issuer's or administrator's internal dispute resolution process; and
- was not based on any additional amount owed to the provider as the result of a formal dispute resolution process.

Health benefit plan issuers or administrators would have to provide written notice in an explanation of benefits provided to the enrollee and the out-of-network provider in connection with a health care service or supply that was subject to required coverage under the bill. The notice would have to include:

- a statement of the billing prohibition;
- the total amount the provider could bill an enrollee under the enrollee's health benefit plan and an itemization of copayments, deductibles, coinsurance, or other amounts included in that total; and

- for an explanation of benefits provided to the provider, information required by insurance commissioner rule advising the provider of the availability of mediation or arbitration, as applicable.

Enforcement. The attorney general could bring a civil action in the name of the state to enjoin the individual or entity from a violation if the attorney general received a referral indicating that an individual or entity, including a health benefit plan issuer or administrator, had exhibited a pattern of intentionally violating the prohibition on balance billing. The attorney general could recover reasonable attorney's fees and expenses incurred if the action prevailed.

Agencies that regulated the health care industry also would have to take disciplinary action against entities that violated the prohibition on balance billing. Regulatory agencies could adopt necessary rules to implement the bill and would not be subject to increasing cost requirements.

Mandatory mediation. The insurance commissioner would be required to establish and administer a mediation program to resolve disputes over out-of-network provider charges for providers that were facilities. The commissioner would have to adopt rules necessary for the implementation of the program, including an online mediation request form, and maintain a list of qualified mediators for the program.

Out-of-network providers, health benefit plan issuers, and administrators could request mediation of a settlement of an out-of-network health benefit claim through a portal on TDI's website if:

- there was an amount billed by the provider and unpaid by the issuer or administrator after copayments, deductibles, and coinsurance for which an enrollee could not be billed; and
- the health benefit claim was for emergency care, an out-of-network laboratory service, or an out-of-network diagnostic imaging service.

If a person requested mediation, the out-of-network provider and the health benefit plan issuer or administrator would have to participate in the mediation.

The bill would require a mediator to be approved by the insurance commissioner, rather than the chief administrative law judge, and the insurance commissioner would have to immediately terminate the approval of a mediator who no longer met the requirements of the bill.

If the parties did not select a mediator by mutual agreement on or before the 30th day after the date the mediation was requested, the party requesting the mediation would have to notify the insurance commissioner, who would select a mediator from the list of approved mediators.

The person requesting mediation would have to provide written notice on the date the mediation was requested in the form and manner provided by insurance commissioner rule to TDI and each other party.

Right to receive payment and file action. Out-of-network providers would have the right to a reasonable payment from an enrollee's health benefit plan for covered services and supplies provided to the enrollee for which the provider had not been fully reimbursed. Within 45 days of the mediator's report, either party to a mediation for which there was no agreement could file a civil action to determine the amount due to an out-of-network provider. Parties could not bring a civil action before the conclusion of the mediation process.

Within 45 days of the mediation's conclusion, the mediator would have to report to the insurance commissioner and the Texas Medical Board the names of the parties to mediation and whether they reached an agreement.

Mandatory arbitration. The insurance commissioner would have to establish and administer an arbitration program to resolve disputes over out-of-network provider charges for providers that were not facilities. The commissioner would have to adopt rules necessary for the implementation of the program, including an online mediation request form, and maintain a list of qualified arbitrators for the program.

The only issue an arbitrator could determine would be the reasonable amount for the health care or medical services or supplies provided to the

enrollee by an out-of-network provider. The determination would have to take into account several factors specified in the bill, including:

- whether there was a gross disparity between the fee billed by the out-of-network provider and fees paid to the out-of-network provider for the same services to other enrollees and fees paid by the health benefit plan issuer to reimburse similarly qualified providers for the same services in the same region;
- the out-of-network provider's usual billed charge for comparable services or supplies with regard to other enrollees; and
- the 80th percentile of all billed charges for the service or supply performed by a health care provider in the same or similar specialty and provided in the same geographical area as reported in the benchmarking database.

Within 90 days of the date an out-of-network provider received the initial payment for a health care or medical service or supply, the out-of-network provider or the health benefit plan issuer or administrator could request arbitration of a settlement of an out-of-network health benefit claim through a portal on TDI's website if the claim met certain requirements as specified in the bill.

If a person requested arbitration, the out-of-network provider and health benefit plan issuer or administrator, as appropriate, would have to participate in the arbitration. The person who requested the arbitration would have to provide written notice on the date the arbitration was requested to TDI and each other party.

All parties would have to participate in an informal settlement teleconference within 30 days of the date on which the arbitration was requested.

The insurance commissioner would have to adopt rules providing requirements for submitting arbitration in one proceeding. The rules would have to meet certain requirements as specified in the bill.

Out-of-network providers, health benefit plan issuers, or administrators could not file suit for an out-of-network claim until the conclusion of

arbitration on the issue of the amount to be paid in the out-of-network claim dispute. Arbitrations conducted under the bill would not be subject to civil practices and remedies law governing alternate methods of dispute resolution.

Selection and approval of arbitrators. If the parties did not select an arbitrator by mutual agreement within 30 days of the date that the arbitration was requested, the party requesting the arbitration would have to notify the insurance commissioner, who would select an arbitrator.

In approving an individual as an arbitrator, the insurance commissioner would have to ensure that the individual did not have a conflict of interest. The insurance commissioner would have to immediately terminate the approval of an arbitrator who no longer met the requirements under the bill.

Procedures. The arbitrator would have to set a date for submission of all information to be considered. Parties could not engage in discovery in connection with the arbitration. On agreement of all parties, any deadline under the bill could be extended. Unless otherwise agreed to by the parties, an arbitrator could not determine whether a health benefit plan covered a particular health care or medical service or supply. Parties would have to evenly split and pay the arbitrator's fees and expenses.

Decision. Within 75 days of the date that the arbitration was requested, an arbitrator would have to provide the parties with a written decision in which the arbitrator determined whether the billed charge or initial payment made by the health benefit plan issuer or administrator was closest to the reasonable amount for the services or supplies. If the out-of-network provider elected to participate in the internal appeal process of the issuer or administrator before arbitration, the provider could revise the billed charge to correct a billing error, and the health benefit plan issuer or administrator could increase the initial payment. The arbitrator would select that billed charge or initial payment as the binding award amount.

An arbitrator could not modify the binding award amount. An arbitrator would have to provide written notice of the reasonable amount for the services or supplies and the binding award amount. If the parties settled

before a decision, the parties would have to provide written notice of the amount of the settlement. TDI would have to maintain a record of the notices.

An arbitrator's decision would be binding. Within 45 days of the decision, a party not satisfied with the decision could file an action to determine the payment due, in which case the court would have to determine whether the arbitrator's decision was proper based on a substantial evidence standard of review. Within 10 days of the arbitrator's decision or a court's determination, a health benefit plan issuer or administrator would have to pay to an out-of-network provider any additional amount necessary to satisfy the binding award or the court's determination, as applicable.

Bad faith participation. The same standards and penalties for bad faith mediation would apply to conduct in an arbitration under the bill.

Required coverages. Under the bill, certain health benefit plans would have to cover emergency care at the usual and customary rate or an agreed rate. They also would have to cover care from a facility-based provider, diagnostic imaging, and laboratory services at the usual and customary rate or an agreed rate if the provider performed the service at a health care facility that was a participating provider. The usual and customary rate would be the relevant allowable amount as described by the master benefit plan document or policy.

The bill would not apply to a nonemergency health care or medical service that an enrollee elected to receive from an out-of-network provider if the out-of-network provider provided the enrollee with written disclosure that explained that the provider did not have a contract with the enrollee's health benefit plan, disclosed projected amounts for which the enrollee could be responsible, and disclosed the circumstances under which the enrollee would be responsible for those amounts.

Clean claims. Health maintenance organizations would have to act on a clean claim related to a health care or medical service or supply required to be covered under the bill as if the out-of-network provider was a participating physician or provider. Insurers would have to act on a clean claim related to a health care or medical service or supply as if the out-of-

network provider was a preferred provider. Administrators would have to act on a clean claim related to a health care or medical service or supply as if the out-of-network provider was a preferred provider and the administrator was an insurer.

Benchmarking database. The insurance commissioner would have to select an organization to maintain a benchmarking database that contained information necessary to calculate, with respect to a health care or medical service or supply, for each geographical area in the state:

- the 80th percentile of billed charges of all physicians or health care providers who were not facilities; and
- the 50th percentile of rates paid to participating providers who were not facilities.

The insurance commissioner could not select an organization that was financially affiliated with a health benefit plan issuer to maintain the database.

Study. TDI would have to conduct a study on the impacts of the bill on Texas consumers and health coverage in the state each biennium and submit a written report on the results and findings to the Legislature by December 1 of each even-numbered year. The study would have to include information on trends in billed amounts and amounts paid for health care and medical services, network participation, number of complaints, the effectiveness of the claim dispute resolution process, and other areas as specified in the bill.

TDI would have to collect settlement data and verdicts or arbitration awards, as applicable, from parties to mediation or arbitration. TDI would have to collect data quarterly from a health benefit plan issuer or administrator to conduct the study and could use any reliable external resource to acquire information reasonably necessary to prepare the report.

Appropriations. TDI, the Employees Retirement System of Texas, the Teacher Retirement System of Texas, and any other state agency subject to the bill would be required to implement a provision of the bill only if

the Legislature appropriated money specifically for that purpose. If the Legislature did not appropriate money, the agencies would be permitted, but not required to, implement the bill with other available appropriations.

The bill would take effect September 1, 2019, and would apply to a health care or medical service or supply provided on or after January 1, 2020.

SUPPORTERS SAY:

CSSB 1264 would protect Texans from surprise medical billings. When patients cannot choose their medical care providers, such as in emergency situations, they may unknowingly get care out of their network because of an out-of-network physician at an in-network facility or because they were transported to the nearest facility for emergency care. When an insurance company fails to cover the cost of the service, the provider then bills the patient for the remaining balance and it is the patient's responsibility to contest the bill. This balance billing would be prohibited under CSSB 1264, relieving consumers of these surprise medical bills. Instead of billing the patient, the provider would have to go through a process of mediation or arbitration with the insurer until a price was agreed upon.

Requiring the mediation or arbitration processes to take place between the insurer and provider would relieve consumers of the stress, confusion, and difficulty of having to navigate the mediation process and protect consumers from unexpected high costs associated with care that they either had no choice in receiving or that they thought was covered under their health insurance.

The bill also would incentivize compliance by allowing the attorney general to bring a civil action against any entity that violated the prohibition on balance billing. Regulatory agencies also would be required to enforce the prohibition, giving the bill the penalties necessary for it to be successful.

The bill would use "baseball-style arbitration," which requires each party to suggest a price they considered to be reasonable to the arbiter, who then would choose the more reasonable rate between the two. In other states, this style of arbitration has led to a decrease in both physician charges and out-of-network billing.

The study required under the bill would provide lawmakers, consumers, and agencies with the information necessary to gain a deeper understanding of the value of health plans. By allowing billing rates to be worked out through the mediation and arbitration processes rather than assigning a standard, the bill would ensure that the widest possible number of stakeholders benefited from the bill.

OPPONENTS SAY:

CSSB 1264 would not solve the central cause of surprise medical billing because it would not create a standard billing rate for services. Instead, the bill should define a usual and customary rate as no more than the 80th percentile of billed charges of all physicians or health care providers in the region. Without defining rates, the arbiters, insurance companies, and providers would have no reference point for what a reasonable charge would be and too many claims would have to be arbitrated through this system. Providing a reference point would allow for fewer claims and a more transparent and streamlined system.

OTHER OPPONENTS SAY:

Rather than the 80th percentile of billed charges, CSSB 1264 should set rates that were based upon other government rates, such as Medicaid. Using government rates as a starting point would mean a fairer rate for all parties involved.

NOTES:

According to the Legislative Budget Board, the bill would have a negative impact of $10.5 million to general revenue related funds through fiscal 2020-21.

CSSB 1264 was reported favorably without amendment from the House Committee on Insurance on May 6, placed on the General State Calendar for May 17, recommitted to committee, and reported favorably as substituted on May 16.

SUBJECT: Requiring universities to report sexual assault allegations

COMMITTEE: Higher Education — favorable, without amendment

VOTE: 6 ayes — C. Turner, Stucky, Button, Frullo, Pacheco, Smithee

2 nays — Schaefer, Wilson

3 absent — Howard, E. Johnson, Walle

SENATE VOTE: On final passage, March 26 — 31-0

WITNESSES: For — (*Registered, but did not testify*: James Grace Jr., Houston Area Women's Center; Chris Kaiser, Texas Association Against Sexual Assault; Krista Del Gallo, Texas Council on Family Violence)

Against — None

On — Rex Peebles, Higher Education Coordinating Board

BACKGROUND: Title IX of the federal Education Amendments of 1972 prohibits discrimination on the basis of sex in education programs or activities receiving federal financial assistance.

DIGEST: SB 212 would require employees of Texas postsecondary institutions to report certain sexually related incidents against a student or employee to the institution's Title IX coordinator. The bill would create an offense for failure to report an incident or making a false report.

Incident reporting. SB 212 would require employees of public, private, and independent institutions of higher education who witnessed or received information about an incident that the employee reasonably believed constituted sexual harassment, sexual assault, dating violence, or stalking against a student or employee to report the incident to the institution's Title IX coordinator or deputy coordinator. An employee would not include a student enrolled at the institution.

The bill would define "dating violence," "sexual assault," and "stalking" as those terms are defined in the federal Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, a 1990 law requiring the disclosure of information about campus crime.

The report would have to include all information concerning the incident known to the reporting person that was relevant to the investigation and, if applicable, redress of the incident, including whether an alleged victim had expressed a desire for confidentiality.

An employee designated by an institution as a person with whom students could speak confidentially or who received information under circumstances that rendered the employee's communications confidential or privileged under other law would, in making a report, state only the type of incident reported and could not include any information that would violate a student's expectation of privacy. Such an employee's duty to report an incident under any other law would not be affected by the bill.

A person would not be required to make a report concerning an incident in which the person was a victim of sexual harassment, sexual assault, dating violence, or stalking. A person also would not be required to make a report on a disclosure made at a public awareness event sponsored by a postsecondary educational institution or by a student organization.

At least once every three months, the Title IX coordinator would have to submit to the institution's chief executive officer (CEO) a written report on the incident reports received, including information regarding:

- the investigation of those reports;
- the disposition, if any, of any disciplinary processes arising from those reports; and
- the reports for which the institution determined not to initiate a disciplinary process, if any.

A Title IX coordinator or deputy coordinator would have to immediately report to the institution's CEO a reported incident that the coordinator believed could put the safety of any person in imminent danger.

At least once during each fall or spring semester, the CEO would have to submit to the institution's governing body and post on the institution's website a report concerning the reported incidents. The report could not identify any person and would have to include:

- the number of incident reports received and the number of resulting investigations;
- the disposition, if any, of any disciplinary processes arising from those incidents;
- the number of those incidents for which the institution determined not to initiate a disciplinary process; and
- any disciplinary action taken.

An institution with fewer than 1,500 students would have to submit a report for a given semester only if more than five incidents were reported.

Confidentiality. The identity of an alleged victim of a reported incident would be confidential unless waived in writing by the alleged victim. The identity would not be subject to Texas public information laws and could be disclosed only to:

- persons employed by or under contract with the institution who were necessary to conduct an investigation or related hearings;
- a law enforcement officer as necessary to conduct a criminal investigation;
- the person or persons alleged to have perpetrated the incident, to the extent required by other law; or
- potential witnesses as necessary to conduct an investigation.

Retaliation prohibited. An institution could not discipline or otherwise discriminate against an employee who made a good faith report to the institution's Title IX coordinator or cooperated with the resulting investigation, disciplinary process, or judicial proceeding. The prohibition on retaliation would not apply to an employee who reported an incident perpetrated by the employee or who cooperated with the resulting investigation, disciplinary process, or judicial proceeding.

Immunities. A person who acted in good faith to report or assist in the investigation of an incident or who testified or otherwise participated in a disciplinary process or judicial proceeding arising from an incident would be immune from civil liability and from criminal liability for fine-only offenses that might otherwise be imposed as a result of those actions.

Such a person also could not be subjected to any disciplinary action by the institution at which the person was enrolled or employed for any violation of the institution's code of conduct reasonably related to an incident for which suspension or expulsion would not be a possible punishment.

The bill's immunities would not apply to a person who perpetrated or assisted in the perpetration of a reported incident.

Offenses. SB 212 would make it an offense for a person who was required to make a report to the Title IX coordinator and knowingly failed to make the report or knowingly filed a false report with the intent to harm or deceive. Such an offense would be a class B misdemeanor (up to 180 days in jail and/or a maximum fine of $2,000). If it was shown at trial that the actor intended to conceal the incident the offense would be a class A misdemeanor (up to one year in jail and/or a maximum fine of $4,000).

An institution would be required to terminate an employee whom it determined had committed an offense.

Compliance. The CEO of each institution would have to annually certify in writing to the Texas Higher Education Coordinating Board that it was in substantial compliance with the bill's requirements. If the coordinating board determined that an institution was not in substantial compliance, it could assess an administrative penalty of up to $2 million. In determining the amount of the penalty, the coordinating board would have to consider the nature of the violation and number of students enrolled at the institution.

The coordinating board would have to provide the institution with written notice of its reasons for assessing the penalty, and the institution could appeal. An institution could not pay a penalty using state or federal money. Funds collected from an administrative penalty would be

deposited to the sexual assault program fund.

The coordinating board would be required to annually submit to the governor, lieutenant governor, House speaker and relevant legislative standing committees a report on compliance with the bill, including a summary of institutions found not to be in substantial compliance and any penalties assessed during the preceding calendar year. The initial report would be due by January 1, 2021.

The coordinating board would have to adopt rules necessary to implement and enforce the bill's requirements in a manner that complied with federal law regarding confidentiality of student educational information.

Training. The commissioner of higher education would have to establish an advisory committee to develop recommended training for persons required to report incidents and for Title IX coordinators and deputy coordinators. The committee would have to consist of eight institution CEOs or their representatives and one representative of a sexual assault or family violence advocacy group.

The committee would have to develop the recommended training by December 1, 2019. These provisions would expire September 1, 2020.

Effective dates. The incident reporting requirements would apply beginning January 1, 2020.

The bill would take effect September 1, 2019, except that the requirements for the training advisory committee would take immediate effect if the bill was finally passed by a two-thirds record vote of the membership of each house. Otherwise, those requirements would take effect September 1, 2019.

SUPPORTERS SAY:

SB 212 would provide a safe and reliable structure for reporting incidents of sexual assault, sexual harassment, dating violence, and stalking against college students and employees. While studies have shown that as many as one in five women experience some form of sexual assault while in college, actual data is lacking. The reporting required by the bill would establish the prevalence of these incidents and would raise awareness of

the problem. The reporting would ensure that universities did not cover up incidents. As victims learn they are not alone, more are likely to come forward and report.

The bill would ensure victims' privacy except when confidentiality was waived by the victim or when necessary to conduct an appropriate investigation. This would balance students' need to seek help with their expectations of privacy.

Most Texas higher education institutions already require certain employees to report sexual assault to the institution's Title IX office. SB 212 would ensure uniformity in reporting from institutions throughout the state. Title IX coordinators would be required to report to the institution's president all reported incidents, including their investigation and disposition. The information would be publicly reported on each institution's website so students knew the extent of the problem on their campus.

The criminal penalties for failure to report and the administrative penalties on universities that were not in substantial compliance are necessary to ensure colleges and universities take the reporting requirements seriously.

OPPONENTS SAY:

SB 212, while well intentioned, could result in deficiencies in investigating and prosecuting sexual assault and related crimes at universities. The reporting requirements of SB 212 could be overly broad and require employees to report even rumors of sexual incidents. This could lead to over-reporting by employees concerned about a criminal offense for failure to report an incident. Universities would have difficulty investigating rumored or fabricated reports. It is not the role of state government to mandate reporting requirements on private colleges and universities.

University Title IX offices are not the appropriate places for investigating crimes that would be better addressed by law enforcement authorities who have the training and resources to determine if charges should be filed.

SUBJECT: Prohibiting life insurance denial based on possessing an opioid antagonist

COMMITTEE: Insurance — favorable, without amendment

VOTE: 6 ayes — Lucio, S. Davis, Julie Johnson, Lambert, C. Turner, Vo

0 nays

3 absent — Oliverson, G. Bonnen, Paul

SENATE VOTE: On final passage, April 26 — 29-1 (Fallon), on Local and Uncontested Calendar

WITNESSES: For — Jay Thompson, TALHI, Prudential; (*Registered, but did not testify*: Natalie Gregory, Protect Texas Fragile Kids)

Against — None

On — (*Registered, but did not testify*: Doug Danzeiser, Texas Department of Insurance)

BACKGROUND: Some have suggested that when life insurers consider the use of prescription drugs when reviewing applicants, it can be difficult to differentiate between someone with a prescription for an opioid antagonist who is at risk of an overdose and someone with a prescription to administer to another person, resulting in some individuals being denied coverage based on their possession of such medication.

DIGEST: SB 437 would prohibit a life insurance company from denying coverage to an individual based solely on whether the individual had been prescribed or had obtained through a standing order an opioid antagonist. A life insurance company also could not:

- limit the amount, extent, or kind of coverage available to the individual; or
- charge the individual or a group to which the individual belonged a rate that was different from the rate charged to others for the

same coverage, unless the charge was based on sound underwriting or actuarial principles reasonably related to actual or anticipated loss experience for a particular risk.

The bill would define "opioid antagonist" as any drug that binds to opioid receptors and blocks or otherwise inhibits the effects of opioids acting on those receptors to reverse the effects of an opioid overdose.

The bill would apply to a life insurance policy issued or delivered in Texas or issued by a life insurance company organized in Texas.

The bill would take effect September 1, 2019.

SUBJECT: Establishing state review of local disaster recovery housing plans

COMMITTEE: County Affairs — committee substitute recommended

VOTE: 7 ayes — Coleman, Bohac, Anderson, Cole, Dominguez, Huberty, Rosenthal

1 nay — Biedermann

1 absent — Stickland

SENATE VOTE: On final passage, April 8 — 30-0

WITNESSES: For — Charlie Duncan, Texas Housers; John Henneberger, Texas Low Income Housing Information Service; (*Registered, but did not testify*: Jim Allison, County Judges and Commissioners Association of Texas; Kyle Jackson, Texas Apartment Association; Ned Muñoz, Texas Association of Builders; Samantha Foss, Texas Homeless Network)

Against — None

On — Christa Walikonis, Disability Rights Texas; Ender Reed, Harris County Commissioners Court; Shannon Van Zandt; (*Registered, but did not testify*: Heather Lagrone, Texas General Land Office)

BACKGROUND: Some have called for the state and local governments to better coordinate their efforts to rebuild housing and infrastructure after a disaster.

DIGEST: CSSB 289 would allow local governments to establish disaster recovery plans and establish procedures for state review of those plans.

The bill would designate the General Land Office (GLO) as the state agency that received and administered federal and state funds appropriated for long-term disaster recovery unless the governor designated a different agency.

GLO would collaborate with the Texas Division of Emergency

Management and the Federal Emergency Management Agency (FEMA) and seek prior approval from FEMA and the U.S. Department of Housing and Urban Development for the immediate post-disaster implementation of its accepted local housing recovery plans.

GLO could adopt rules to implement the bill's provisions and would have to maintain a division with adequate staffing for those purposes.

Local housing recovery plan. A local government could develop and adopt a local housing recovery plan to provide for the rapid and efficient construction of permanent replacement housing following a disaster. The local government would have to seek input from community stakeholders and neighboring local governments to develop the plan.

A local government could submit a local housing recovery plan to the Hazard Reduction and Recovery Center at Texas A&M University. The center would have to review and certify any such plans according to criteria that it would be required to develop. The center would not be allowed to certify a plan unless it:

- identified areas in the local government’s boundaries that were vulnerable to disasters;
- identified sources of post-disaster housing assistance and recovery funds;
- provided procedures for rapidly responding to a disaster, including certain required procedures specified in the bill;
- allowed for the temporary, emergency waiver or modification of an existing local code, ordinance, or regulation that could apply in the event of a disaster declaration in order to expedite the process of providing temporary housing or rebuilding residential structures for persons displaced by a disaster;
- provided procedures to encourage residents to rebuild outside of the vulnerable areas identified in the plan;
- provided procedures to maximize the use of local businesses, contractors, and supplies, to the extent possible, in rebuilding;
- provided procedures to maximize cost efficiency;
- provided for the provision of temporary housing within six months

and permanent replacement housing within three years;

- specified whether the local government that submitted the plan or GLO, as determined by GLO, would administer disaster rebuilding activities;
- provided a procedure through which the local government that submitted the plan would be required to, between every four to seven years, review the plan to ensure continued local support, provide the center with revisions to the plan as necessary, and provide the center with a resolution or proclamation adopted by the local government that certified continued local support; and
- complied with applicable state and federal law.

If the center determined that a plan did not meet these criteria, the center would have to identify the plan's deficiencies and assist the local government in revising the plan to meet the criteria.

GLO review. The bill would require the center to submit to GLO any plan that it certified. GLO would have to review the plan and consult with the center and the local government about any potential improvements it could identify. GLO would be required to give deference to the local government regarding matters at the local government's discretion.

On completion of the review, GLO would have to accept the plan unless it determined that the plan did not satisfy the criteria for a certified plan as described above, provide for the rapid and efficient construction of permanent replacement housing, or comply with applicable state and federal laws.

If GLO rejected a plan, it could require the local government to revise and resubmit the plan. If GLO accepted the plan, it could withdraw acceptance at any time and require the plan to be revised and resubmitted for acceptance or rejection.

GLO could limit the number of plans it reviewed annually.

Acceptance. An accepted plan would be valid for four years and could be implemented during that period without further acceptance if a disaster occurred. On or before the plan's expiration, the plan could be reviewed

by GLO and center, updated if necessary, and resubmitted to GLO for acceptance or rejection.

Other center responsibilities. CSSB 289 would require the center to provide training to local governments and community-based organizations on developing a plan. A local government that submitted a plan to the center for certification would be required to designate at least one representative to attend the center's training.

The center would be required to create and maintain mapping and data resources related to disaster recovery and planning, including the Texas Coastal Communities Planning Atlas. It also would have to assist local governments that requested help in identifying areas that were vulnerable to disasters.

The center would have to provide recommendations to the Texas Department of Insurance regarding the development of policies, procedures, and education programs to enable the quick and efficient reporting and settling of housing claims related to disasters.

The center could seek and accept gifts, grants, donations, and other funds to assist it in fulfilling the duties under this bill.

Report. GLO and the center would be required to prepare and submit to the Legislature a written report that summarized the success of the planning process and recommended any statutory or legislative changes necessary to improve it. The report would be due January 1, 2021.

Appropriations. GLO or another state agency would be required to implement provisions of the bill only if the Legislature appropriated money specifically for that purpose. If the Legislature did not appropriate money to implement a particular provision of the bill, GLO would be allowed, but not required to, implement that provision using other appropriations available for that purpose.

The bill would take effect September 1, 2019.

NOTES: According to the Legislative Budget Board, the bill would have a negative impact of about $499,000 to general revenue related funds through fiscal 2020-21.

SUBJECT: Removing travel limitation for certain aircrafts exempt from sales tax

COMMITTEE: Ways and Means — committee substitute recommended

VOTE: 11 ayes — Burrows, Guillen, Bohac, Cole, Martinez Fischer, Murphy, Noble, E. Rodriguez, Sanford, Shaheen, Wray

0 nays

SENATE VOTE: On final passage, April 10 — 30-0

WITNESSES: For — None

Against — (*Registered, but did not testify*: Michael Openshaw)

BACKGROUND: Tax Code sec. 151.328 exempts aircrafts from sales and use taxes under certain circumstances, including if the aircraft is sold in this state to a person for use exclusively in connection with an agricultural use.

Under sec. 151.328(h), an aircraft is considered to be for use exclusively in connection with an agricultural use if 95 percent of its use is for predator control; wildlife or livestock capture or surveys, or census counts; animal or plant health inspection; or crop dusting, pollination, or seeding. Travel of up to 30 miles each way to a location to perform those services does not disqualify an aircraft from tax exemption.

Some have suggested removing the restriction on distance traveled for certain agricultural services to qualify an aircraft for a tax exemption.

DIGEST: CSSB 1214 would remove the 30 mile limitation for travel of an aircraft to and from a location for certain agricultural purposes to qualify for a sales and use tax exemption.

The bill would take effect September 1, 2019, and would not affect tax liability accruing before that date.

SUBJECT: Reporting the use of federal money for flood projects

COMMITTEE: Natural Resources — favorable, without amendment

VOTE: 6 ayes — Larson, Metcalf, Harris, Lang, Price, Ramos

0 nays

5 absent — Dominguez, Farrar, T. King, Nevárez, Oliverson

SENATE VOTE: On final passage, March 20 — 31-0

WITNESSES: For — (*Registered, but did not testify*: Dana Harris, Austin Chamber of Commerce; Aimee Bertrand, Harris County Commissioners Court; Cyrus Reed, Lone Star Chapter Sierra Club; Wes Birdwell, Texas Floodplain Management Association; Karen Collins; Ann Compton; Bill Kelberlau; Ronda McCauley; Stephanie Swanson; Virginia Tippit)

Against — None

On — (*Registered, but did not testify*: Jeff Walker, Texas Water Development Board; Nina Brodsky; Sandra Burchsted)

DIGEST: SB 563 would require any state agencies and public higher education institutions that used or dispersed federal funds for flood research, planning or mitigation projects to submit quarterly reports to the Texas Water Development Board (TWDB).

The report would be required to include total federal funds received, funds used to date, and eligibility requirements for the funding. TWDB would be required to make a publicly accessible database of this information available on its website.

The bill would take effect September 1, 2019.

SUBJECT: Increasing maximum penalty for violation of water sanitation standards

COMMITTEE: Environmental Regulation — favorable, without amendment

VOTE: 7 ayes — E. Thompson, Blanco, Kacal, Kuempel, Reynolds, J. Turner, Zwiener

0 nays

2 absent — Lozano, Morrison

SENATE VOTE: On final passage, March 27 — 31-0

WITNESSES: For — (*Registered, but did not testify*: Cyrus Reed, Lone Star Chapter Sierra Club; Adrian Shelley, Public Citizen; Alexis Tatum, Travis County Commissioners Court; and six individuals)

Against — (*Registered, but did not testify*: Sommer Iqbal, City of Dallas)

On — (*Registered, but did not testify*: Bryan Sinclair, Texas Commission on Environmental Quality)

BACKGROUND: Health and Safety Code ch. 341, subch. C establishes sanitary standards for drinking water and for protection of public water supplies and bodies of water.

Sec. 341.048 permits the Texas Commission on Environmental Quality (TCEQ), a county, or a municipality to institute a civil suit against a person who violates the standards to assess a civil penalty. Sec. 341.049 permits TCEQ to assess a penalty against a person who causes, suffers, allows, or permits a violation of the standards. In each case, the penalty can range from $50 to $1,000 for each violation.

DIGEST: SB 530 would increase the maximum civil penalty that could be recovered by the Texas Commission on Environmental Quality (TCEQ) or a city or municipality in a civil suit and the maximum penalty that could be assessed by the TCEQ for a violation of sanitary standards for drinking

water, public water supplies, and bodies of water from $1,000 to $5,000.

The bill would take effect September 1, 2019, and would apply only to violations that occurred on or after the bill's effective date.

NOTES:

According to the Legislative Budget Board, the bill would have a positive impact of $2.9 million to general revenue related funds through fiscal 2020-21.

SUBJECT: Creating dedicated account for newborn screenings

COMMITTEE: Public Health — favorable, with amendment

VOTE: 7 ayes — S. Thompson, Wray, Allison, Coleman, Frank, Price, Zedler

0 nays

4 absent — Guerra, Lucio, Ortega, Sheffield

SENATE VOTE: On final passage, March 19 — 31-0

WITNESSES: For — Khrystal K Davis; (*Registered, but did not testify*: Kwame Walker, BIOGEN; Anne Dunkelberg, Center for Public Policy Priorities; Maggie Stern, Children's Defense Fund; Chase Bearden and Chris Masey, Coalition of Texans with Disabilities; Lindsay Lanagan, Legacy Community Health; Christine Yanas, Methodist Healthcare Ministries of South Texas, Inc.; Kaska Watson, National Infusion Center Association; Brittani Bilse, Sarepta Therapeutics; AJ Louderback, Sheriffs Association of Texas; Marshall Kenderdine, Texas Academy of Family Physicians; Carla Rider, Texas EMS, Trauma and Acute Care Foundation; Carrie Kroll, Texas Hospital Association; Troy Alexander, Texas Medical Association; Kaitlyn Doerge, Texas Pediatric Society; Beth Cortez-Neavel, TexProtects-The Texas Association for the Protection of Children; Thomas Kowalski, THBI; Richard Perez, The San Antonio Chamber of Commerce; Nataly Sauceda, United Ways of Texas; Joy Davis)

Against — (*Registered, but did not testify*: Margarita Strickland; Joshua Stubbs; Ruth York)

On — (*Registered, but did not testify*: Imelda Garcia, Department of State Health Services)

BACKGROUND: Health and Safety Code sec. 33.004 requires the Department of State Health Services to implement a newborn screening program. The executive commissioner of the Health and Human Services Commission

by rule may establish the amounts charged for newborn screening fees, including fees assessed for follow-up services, tracking confirmatory testing, and diagnosis.

Tax Code ch. 323 establishes the County Sales and Use Tax Act, which governs the administration of sales and use taxes in counties. Tax Code ch. 26 excludes certain city, county, and hospital districts' additional sales and use taxes from certain property tax assessment provisions.

Observers have noted the need to create a sustainable source of funding for newborn screenings. Newborn screenings help identify rare genetic disorders early, which can prevent complications such as developmental delays, illness, or even death. Observers have suggested that providing financial stability for the department's newborn screening program would ensure infants continued receiving screenings needed to identify, treat, and manage rare disorders.

DIGEST:

SB 748, as amended, would create a general revenue dedicated account to fund newborn screenings conducted by the Department of State Health Services (DSHS). The bill also would allow the Midland County Hospital District to impose a sales and use tax and make other conforming changes in Special District Local Laws Code ch. 1061 and Tax Code ch. 26.

Newborn screening preservation account. The bill would create the newborn screening preservation account, which would be a general revenue dedicated account administered by DSHS. Money in the account could be appropriated only to the department for the purpose of carrying out the newborn screening program.

On November 1 of each year, the comptroller would have to transfer to the account any unexpended and unencumbered money from Medicaid reimbursements collected by the department for newborn screening services during the preceding state fiscal year. DSHS could solicit and receive gifts, grants, and donations from any source for the benefit of the account.

The account would be composed of:

- money transferred to the account by the comptroller;
- gifts, grants, donations, and legislative appropriations; and
- interest earned on the investment of money in the account.

DSHS could use any money remaining in the account after paying the costs of operating the newborn screening program only:

- to pay the costs of offering additional newborn screening tests not offered under the program before September 1, 2019; and
- to pay for capital assets, equipment, and renovations for the laboratory established by the department to ensure the continuous operation of the newborn screening program.

DSHS could not use money from the account for the department's general operating expenses.

Rules. The executive commissioner of the Health and Human Services Commission by rule would have to establish amounts charged for newborn screening fees and ensure those amounts were sufficient to cover the costs of performing the screening.

Report. By September 1 of each even-numbered year, DSHS would have to submit a written report to the governor, lieutenant governor, House speaker, the Legislative Budget Board, and the appropriate legislative standing committees summarizing:

- the implementation plan for additional newborn screening tests, including anticipated completion dates for implementing the tests and potential barriers in conducting tests; and
- the department's actions to fund and implement the test during the preceding two years.

DSHS would have to submit the first report by December 1, 2019.

Midland County Hospital District. SB 748, as amended, would authorize the Midland County Hospital District to adopt, change the rate of, or abolish a sales and use tax at an election held in the district. The bill

would prohibit the district from adopting or increasing a tax if as a result the combined rate of all sales and use taxes in the district would exceed 2 percent. Revenue collected from a tax imposed under the bill could be used by the Midland County Hospital District for any purpose of the district authorized by law.

The bill would establish election procedures, a tax effective date, and other provisions governing the tax rate and a tax election of the district.

The bill would take effect September 1, 2019.

NOTES:

The committee amendment would allow the Midland County Hospital District to impose a sales and use tax and make other conforming changes in Special District Local Laws Code ch. 1061 and Tax Code ch. 26.

SUBJECT: Designating levels of neonatal and maternal care for hospitals

COMMITTEE: Public Health — committee substitute recommended

VOTE: 7 ayes — S. Thompson, Wray, Allison, Coleman, Frank, Price, Zedler

0 nays

4 absent — Guerra, Lucio, Ortega, Sheffield

SENATE VOTE: On final passage, April 1 — 31-0

WITNESSES: For — James Stockman, Texas Association of Nurse Anesthetists; Steve Wohleb, Texas Hospital Association; Misty Boyer; (*Registered, but did not testify*: Christina Hoppe, Children's Hospital Association of Texas; Juliana Kerker, HCA Healthcare; Elise Richardson, Houston Methodist Hospital; Maureen Milligan, Teaching Hospitals of Texas; Marshall Kenderdine, Texas Academy of Family Physicians; Nora Belcher, Texas e-Health Alliance; Kevin Stewart, Texas Nurse Practitioners; John Henderson and Don McBeath, Texas Organization of Rural and Community Hospitals)

Against — (*Registered, but did not testify*: Andrew Williams)

On — Doug Curran, Texas Medical Association, Texas Pediatric Society, Texas Association of Obstetricians and Gynecologists, American College of Obstetricians and Gynecologists District XI (Texas); Tillmann Hein, Texas Society of Anesthesiologists; (*Registered, but did not testify*: Stephen Pahl, Department of State Health Services)

BACKGROUND: Health and Safety Code sec. 241.183 requires the executive commissioner of the Health and Human Services Commission, in consultation with the Department of State Health Services (DSHS), to adopt rules establishing the levels of care for neonatal and maternal care assigned to hospitals and establishing a process for designating those levels of care.

Sec. 241.187 specifies that the Perinatal Advisory Council is subject to the

Texas Sunset Act and will be abolished on September 1, 2025, along with its applicable provisions, unless continued in statute. The Perinatal Advisory Council must:

- develop and recommend criteria for designating levels of neonatal and maternal care and a process for assigning levels of care to each hospital;
- make recommendations for dividing the state into neonatal and maternal care regions and improving neonatal and maternal care outcomes; and
- examine neonatal and maternal care utilization trends.

Some have called for revisions to the process by which DSHS assigns level of neonatal and maternal care designations for hospitals by creating an appeal and waiver process and clarifying the role of telemedicine in satisfying certain level of care requirements.

DIGEST:

CSSB 749 would require the executive commissioner of the Health and Human Services Commission (HHSC) to adopt certain rules for designating levels of neonatal and maternal care for hospitals and establish an appeal process, waiver agreement, and telemedicine exceptions. The bill also would amend the Perinatal Advisory Council's duties.

Rules. The bill would require the executive commissioner of HHSC, in consultation with the Department of State Health Services (DSHS), to adopt rules establishing a process through which a hospital could obtain a limited follow-up survey by an independent third party to appeal the level of care designation assigned to the hospital. The commissioner also would have to adopt rules permitting a hospital to satisfy any requirement for a Level I or II level of care designation that related to an obstetrics or gynecological physician by:

- granting maternal care privileges to a family physician with obstetrics training or experience; and
- developing and implementing a plan for responding to obstetrical emergencies that required services outside the scope of privileges

granted to the family physician.

The bill also would require the HHSC executive commissioner to adopt rules clarifying that a health provider at a designated facility or hospital could provide the full range of health care services that the provider was authorized to provide under state law and for which the hospital had granted privileges to the provider.

Appeal process. Under the bill, the adopted rules would have to allow a hospital to appeal a level of care designation to a three-person panel that included a DSHS representative, an HHSC representative, and an independent person.

The independent person would be someone who had expertise in the specialty area for which the hospital was seeking a designated level, was not an employee of or affiliated with either DSHS or HHSC, and did not have a conflict of interest with the hospital, DSHS, or HHSC.

Waiver. The bill would require DSHS to implement a process for hospitals at any time to request and enter into an agreement with the department to:

- receive or maintain a level of care designation for which the hospital did not meet all requirements conditioned on the hospital; or
- waive one specific requirement for a designated level.

DSHS could waive a level of care requirement only if DSHS determined the waiver was justified considering the expected impact on the quality of care, patient safety, or the accessibility of care in the hospital's geographical area if the waiver was not granted, or whether certain health care services could be provided through telemedicine.

A hospital that received a waiver for a level of care designation would have to satisfy all other requirements that were not waived.

A waiver agreement would expire by the end of each designation cycle but could be renewed on expiration by DSHS under the same or different

terms.

The bill would require DSHS to post on its website a list of hospitals that entered into a waiver agreement and an aggregated list of requirements conditionally met or waived. A hospital that entered into a waiver agreement would have to post on its website the agreement's general terms.

Telemedicine. Under the bill, the adopted rules would have to allow the use of telemedicine by a licensed physician providing on-call services to satisfy certain requirements for a Level I, II, or III level of care designation. The executive commissioner of HHSC would have to ensure that the provided telemedicine services met the same standard of care for services provided in an in-person setting. These provisions would not waive other requirements for a level of care designation.

Perinatal Advisory Council. The bill would require DSHS, in consultation with the Perinatal Advisory Council, to conduct a strategic review of the practical implementation of adopted rules that identified barriers to a hospital obtaining its requested level of care designation and whether, in making a level of care designation, DSHS or the council should consider the hospital's geographic area. Based on the strategic review, DSHS and the council would have to recommend a modification of adopted rules to improve the methodology of assigning level of care designations.

By December 31, 2019, DSHS and the council would have to submit a written report summarizing the department's review of neonatal care and the actions taken by DSHS or the HHSC executive commissioner based on the review. By December 31, 2020, DSHS and the council would have to submit a written report summarizing the department's review of maternal care and the actions of DSHS or the HHSC executive commissioner.

The bill would remove the provision abolishing the Perinatal Advisory Council on September 1, 2025, and would require the council to be reviewed during the period in which DSHS would be reviewed under the Texas Sunset Act. The bill would establish a September 1, 2021,

expiration date for the Perinatal Advisory Council and its related provisions under Health and Safety Code sec. 241.187.

Other provisions. Under the bill, a hospital would not be required to have a maternal level of care designation as a condition of reimbursement for maternal services through the Medicaid program before September 1, 2021. A hospital that submitted an application to DSHS for a maternal level of care designation before the bill's effective date could amend the application to reflect the bill's applicable changes.

By August 31, 2021, the executive commissioner of HHSC would have to complete maternal level of care designations for each hospital in Texas. As soon as practicable after the bill's effective date, the HHSC executive commissioner would adopt rules to implement the bill's provisions.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2019.

SUBJECT: Expanding maternal care services in Healthy Texas Women program

COMMITTEE: Public Health — favorable, with amendment

VOTE: 10 ayes — S. Thompson, Allison, Coleman, Frank, Guerra, Lucio, Ortega, Price, Sheffield, Zedler

0 nays

1 absent — Wray

SENATE VOTE: On final passage, April 16 — 31-0

WITNESSES: No public hearing

BACKGROUND: Human Resources Code sec. 32.0248, which expired September 1, 2011, established a demonstration project for women's health care services that expanded access to preventive health and family planning services for low-income women.

A similar program has been operated by the Health and Human Services Commission (HHSC) since 2016 as the "Healthy Texas Women program." Certain pregnant women who are eligible for Medicaid are automatically enrolled in the program on the day after their Medicaid coverage ends, two months after the end of their pregnancy.

Health and Safety Code sec. 31.003 authorizes the HHSC executive commissioner to establish a primary health care services program for eligible individuals that provides diagnosis and treatment, emergency services, family planning services, preventive health services, health education, and laboratory, X-ray, or other appropriate diagnostic services.

Health and Safety Code ch. 34 governs the Maternal Mortality and Morbidity Task Force, which is subject to the Texas Sunset Act. Sec. 34.009 specifies certain confidential information acquired by the Department of State Health Services (DSHS) relating to pregnancy-related death or severe maternal morbidity that may not be disclosed.

Unless continued in statute, the task force is abolished, and ch. 34 expires September 1, 2023.

Tax Code ch. 323 establishes the County Sales and Use Tax Act, which governs the administration of sales and use taxes in counties. Ch. 26 excludes certain city, county, and hospital districts' additional sales and use taxes from certain property tax assessment provisions.

Observers have noted the need to address the state's high rates of maternal mortality and morbidity and align state law with new federal legislation on maternal mortality review committees. They suggest expanding prenatal and postpartum care services and improving the quality of care provided to women in this state.

DIGEST:

SB 750, as amended, would require the Health and Human Services Commission (HHSC) to expand prenatal and postpartum care services for certain women enrolled in the Healthy Texas Women program. The bill would require HHSC to assess the feasibility of providing Healthy Texas Women program services through Medicaid managed care.

The bill also would allow the Midland County Hospital District to impose a sales and use tax and make other conforming changes in Special District Local Laws Code ch. 1061 and Tax Code ch. 26.

Prenatal care. The bill would require HHSC, in collaboration with its contracted Medicaid managed care organizations, to develop and implement cost-effective, evidence-based, and enhanced prenatal services for high-risk pregnant women covered under Medicaid.

Postpartum care. HHSC would have to evaluate postpartum care services provided to women enrolled in the Healthy Texas Women program after the first 60 days postpartum. Based on the evaluation, HHSC would be required to develop a limited postpartum care services package for enrolled women to be provided after the first 60 days postpartum and for a maximum of 12 months after their date of enrollment in the Healthy Texas Women program.

Maternal health. The bill would require HHSC to assess the feasibility and cost-effectiveness of providing Healthy Texas Women program services through Medicaid managed care in one or more health care service regions if the Healthy Texas Women Section 1115 Demonstration Waiver was approved. This section would expire September 1, 2021.

If the Centers for Medicare and Medicaid Services approved the waiver, the executive commissioner of HHSC would have to seek an amendment to the waiver as soon as practicable to provide enhanced services under the Healthy Texas Women program.

Using money from an available source and in collaboration with managed care organizations and health care providers who participated in the Healthy Texas Women program, HHSC would have to develop and implement a postpartum depression treatment network for women enrolled in Medicaid or the program.

HHSC also would have to implement strategies ensuring the continuity of care for women who transitioned from Medicaid and enrolled in the Healthy Texas Women program.

Statewide initiatives. The bill would require HHSC to develop or enhance statewide initiatives to improve the quality of maternal health care services and outcomes for women in the state. HHSC would have to specify the initiatives that each contracted managed care organization had to include in the organization's plans. The initiatives could address:

- prenatal and postpartum care rates;
- maternal health disparities that existed for minority women and other high-risk populations of women;
- social determinants of health, defined as environmental conditions that affect an individual's health and quality of life; and
- other priorities specified by HHSC.

HHSC would have to prepare, submit to the Legislature, and make available to the public an annual report summarizing:

- the commission's progress in developing or enhancing the initiatives; and
- each managed care organization's progress in incorporating the required initiatives in the organization's plans.

Medicaid funds. As soon as practicable after the bill's effective date, HHSC would have to apply to the Centers for Medicare and Medicaid Services to receive any federal money available to implement a model of care that improved the quality and accessibility of care for pregnant women with opioid use disorder enrolled in Medicaid during the prenatal and postpartum periods and their children after birth. This section would expire September 1, 2021.

Primary health care. The executive commissioner of HHSC by rule would have to ensure that women receiving services under the Healthy Texas Women program were referred to and provided with information on the primary health care services program.

Review committee. The bill would change the name of the "Maternal Mortality and Morbidity Task Force" to the "Texas Maternal Mortality and Morbidity Review Committee." The bill also would make conforming changes applicable to the review committee under Health and Safety Code ch. 34.

The bill would create an exception under which certain confidential information acquired by the Department of State Health Services (DSHS) regarding a pregnancy-related death or severe maternal morbidity could be disclosed to an appropriate federal agency for the limited purpose of complying with applicable federal requirements.

The bill would extend the expiration date of the review committee and Health and Safety Code ch. 34 from 2023 to 2027.

The Sunset Advisory Commission would have to review the committee during the two-year period preceding the date DSHS was scheduled to be abolished, but the review committee would continue until September 1, 2027. This subsection would expire September 1, 2025.

Other provisions. As soon as practicable after the bill's effective date, HHSC would have to adopt rules to implement the bill's provisions.

HHSC would be required to implement a provision of the bill only if the Legislature appropriated money specifically for that purpose. If the Legislature did not appropriate money specifically for that purpose, the commission could, but would not be required to, implement a provision of the bill using other available appropriations.

The bill also would authorize HHSC to seek a federal waiver or authorization if the commission determined that the waiver or authorization was necessary to implement the bill. HHSC could delay the implementation of the bill's provisions until the waiver or authorization was granted.

Midland County Hospital District. SB 750, as amended, would authorize the Midland County Hospital District to adopt, change the rate of, or abolish a sales and use tax at an election held in the district. The bill would prohibit the district from adopting or increasing a tax if as a result the combined rate of all sales and use taxes in the district would exceed 2 percent. Revenue collected from a tax imposed under the bill could be used by the Midland County Hospital District for any purpose of the district authorized by law.

The bill would establish election procedures, a tax effective date, and other provisions governing the tax rate and a tax election of the district.

Effective date. The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2019.

NOTES:

According to the Legislative Budget Board, the bill would have a negative impact of about $14.7 million to general revenue related funds through fiscal 2020-21.

The committee amendment would allow the Midland County Hospital District to impose a sales and use tax and make other conforming changes in Special District Local Laws Code ch. 1061 and Tax Code ch. 26.

SUBJECT: Modifying rules related to proceedings of courts affected by disasters

COMMITTEE: Judiciary and Civil Jurisprudence — favorable, without amendment

VOTE: 8 ayes — Leach, Farrar, Julie Johnson, Krause, Meyer, Neave, Smith, White

0 nays

1 absent — Y. Davis

SENATE VOTE: On final passage, March 18 — 30-0

WITNESSES: *On House companion bill, HB 2006:*
For — (*Registered, but did not testify*: Jim Allison, County Judges and Commissioners Association of Texas; Mary Tipps, Texans for Lawsuit Reform; Monty Wynn, Texas Municipal League)

Against — (*Registered, but did not testify*: Julie Gilberg)

On — David Slayton, Office of Court Administration

DIGEST: SB 40 would modify rules relating to the terms, locations, and proceedings of courts affect by disasters.

Conduct of court proceedings. The bill would increase from 30 days to 90 days the period of time that the Texas Supreme Court could modify or suspend procedures for the conduct of court proceedings affected by a governor-declared disaster. The bill would specify that the chief justice of the Supreme Court was responsible for renewing such orders.

Terms and sessions. SB 40 would allow the presiding judge of an administrative judicial region to designate the terms and sessions of district courts, statutory county courts, statutory probate courts, county courts, justice courts, municipal courts, and municipal courts of record that were precluded from holding their terms due to a disaster. The judges of the affected courts would have to approve of such designations.

Location of proceedings. The bill would expand the allowable alternate locations that the presiding judge of an administrative judicial region could designate for the proceedings of district courts, statutory county courts, statutory probate courts, and county courts that were precluded from conducting their proceedings at the county seat due to a disaster. Such proceedings could be conducted either:

- in the affected court's judicial district or county; or
- outside that judicial district or county at the location that the presiding judge determined was closest to the county seat and that allowed the court to safely and practicably conduct its proceedings.

SB 40 also would remove a requirement that a disaster occur in a first or second tier coastal county for an alternate location to be designated.

Similarly, the presiding judge of an administrative judicial region could designate alternate locations for the proceedings of justice courts and certain municipal courts either:

- in the county where the justice court was located or in the municipality where the municipal court was located; or
- outside the county or municipality, as applicable, at the location that the presiding judge determined was closest to the court's precinct or municipality and that allowed the court to safely and practicably conduct its proceedings.

Buildings or rooms. The bill would give commissioners courts the discretion to designate buildings or rooms located anywhere in the county to be used for housing county or district courts.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2019.

SUBJECT: Notifying parents of educational rights for certain student evaluations

COMMITTEE: Public Education — favorable, without amendment

VOTE: 12 ayes — Huberty, Bernal, Allen, Allison, Ashby, K. Bell, Dutton, M. González, K. King, Meyer, Talarico, VanDeaver

0 nays

1 absent — Sanford

SENATE VOTE: On final passage, May 10 — 28-3 (Creighton, Fallon, Hancock)

WITNESSES: *On House companion bill, HB 142:*
For — Chris Masey, Coalition of Texans with Disabilities; (*Registered, but did not testify*: Andrea Chevalier, Association of Texas Professional Educators; Steven Aleman, Disability Rights Texas; Traci Berry, Goodwill Central Texas; Aaron Gregg, Texas Association of the Deaf; Paige Williams, Texas Classroom Teachers Association; Linda Litzinger, Texas Parent to Parent; Kyle Ward, Texas PTA; Dee Carney, Texas School Alliance; Portia Bosse, Texas State Teachers Association; Christine Broughal, Texans for Special Education Reform; Emeline Lakrout, UT Disability Advocacy Student Coalition; Kassandra Cardenas, Lucy Marks, Felicia Miyakawa)

Against — None

On — (*Registered, but did not testify*: Kristin Mcguire, TCASE; Eric Marin and Justin Porter, Texas Education Agency)

BACKGROUND: Interested parties have suggested that parents should be provided with additional information about the process of evaluating schoolchildren to determine if they qualify for special education services.

DIGEST: SB 139 would require the Texas Education Agency (TEA) to develop a notice that indicated certain information about special education services for distribution by districts and charter schools to parents and for posting

on the agency's website.

The notice would have to indicate in plain language the rights of a child under federal and state law and the general process available to initiate a referral of a child for a full individual and initial evaluation to determine the child's eligibility for special education services.

The notice also would have to indicate the change made from 2016 to 2017 in reporting requirements for school districts and open-enrollment charter schools regarding the special education representation indicator adopted in the Performance-Based Monitoring Analysis System Manual.

Districts and charter schools would have to include in the notice developed by TEA information indicating where the local processes and procedures for initiating a referral for special education services eligibility evaluation could be found.

By a date established by the commissioner of education, each school district and open-enrollment charter school would have to provide the notice to the parent of each child who attended school in the district or at the school at any time during the 2019-2020 school year. The information also would have to be available on request to any person. The notice would have to be written in English and Spanish, and a district or charter school would have to make a good faith effort to provide the notice in the native language of a parent who spoke another language.

The notice would be in addition to other Education Code requirements for information concerning special education and education of students with learning difficulties.

The bill's provisions would expire on September 1, 2023.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2019.